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1 - Arkansas attorney general announces special task force

Log Cabin Democrat, 05/07/2013

<http://thecabin.net/latest-news/2013-05-07/arkansas-attorney-general-announces-special-task-force#.UYvEYrU4svk>

Arkansas Attorney General Dustin McDaniel announced a special task force within his office to address questions and concerns resulting from the Mayflower oil spill which occurred March 29.

2 - EPA officials learn about Louisiana agriculture

Delta Farm Press, 05/08/2013

<http://deltafarmpress.com/government/epa-officials-learn-about-louisiana-agriculture>

Officials from the U.S. Environmental Protection Agency met for a two-day (April 30-May 1) whirlwind tour of Louisiana agriculture with the Louisiana Department of Agriculture and Forestry and the LSU AgCenter to give the EPA an understanding of the state's unique challenges.

3 - Groups Protest Bill Ending Environmental Compliance History

NBC 5 DFW, 05/08/2013

<http://www.nbcdfw.com/news/politics/Groups-Protest-Bill-Ending-Environmental-Compliance-History-206556931.html>

Environmental groups are upset that that Texas House is proposing an end to keeping histories of a company's compliance with state and federal laws.

4 - Tulsa gets \$1.4 million in EPA Brownfields grants

Tulsa 8, 05/09/2013

<http://www.ktul.com/story/22202799/tulsa-gets-14-million-in-epa-brownfields-grants>

The city of Tulsa has received a total of \$1.4 million in Environmental Protection Agency grants to help clean up contaminated former industrial sites.

5 - Texas appealing to other states for radioactive trash, looks to expand program

Fox News, 05/09/2013

<http://www.foxnews.com/politics/2013/05/07/texas-looking-to-import-higher-levels-radioactive-trash/>

When it comes to nuclear waste, many states have a not-in-my-backyard attitude. But Texas is rolling out the welcome mat. A measure that would allow three-dozen states to dump even hotter radioactive waste at a West Texas nuclear facility is picking up steam as it makes its way through the state legislature -- despite growing opposition from environmental groups who argue the economic incentives shouldn't trump public safety concerns.

6 - Proposed EPA standards aimed at improving the environment could fuel higher gasoline prices

The Oklahoman, 05/08/2013

<http://newsok.com/proposed-epa-standards-aimed-at-improving-the-environment-could-fuel-higher-gasoline->

The Environmental Protection Agency has proposed a new “Tier 3” gasoline standard that would reduce the sulfur content allowed in gasoline and require vehicle manufacturers to improve engines to reduce emissions.

7 - Advisors See Limits In Pending EPA Fracking Study, Echoing Industry

Inside EPA, 05/08/2013

<http://insideepa.com/201305082433731/EPA-Daily-News/Daily-News/advisors-see-limits-in-pending-epa-fracking-study-echoing-industry/menu-id-95.html>

EPA advisors are raising concerns that data and other limitations could prevent the agency from using its pending study on the possible effects of hydraulic fracturing on drinking water from drawing conclusions on the practice’s safety, echoing statements from industry groups who say the study may not be adequate to justify future regulatory policies.

8 - Senate agrees to exempt farms from oil spill regs as part of WRDA bill

Environment & Energy Daily, 05/09/2013

<http://www.eenews.net/EEDaily/2013/05/09/2>

The Senate yesterday agreed to add an amendment to the Water Resources Development Act that would exempt small farms that store oil in aboveground tanks from federal oil spill regulations.

9 - EPA Moves to Incorporate Environmental Justice in Agency Permitting Process

BNA Daily Environment Report, 05/09/2013

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=31021718&vname=denotallissues&id=a0d8j5z7u8&split=0

The Environmental Protection Agency is announcing practices that regulated entities can undertake to engage environmental justice communities when applying for environmental permits, according to a notice to be published May 9.

10 - EPA Floats Options To Meet D.C. Circuit's Test For Next Interstate Air Plan

Inside EPA, 05/08/2013

<http://insideepa.com/201305082433663/EPA-Daily-News/Daily-News/epa-floats-options-to-meet-dc-circuits-test-for-next-interstate-air-plan/menu-id-95.html>

EPA is floating at least three options for how it could approach a future interstate air pollution plan and ensure it complies with a restrictive U.S. Court of Appeals for the District of Columbia Circuit ruling that scrapped the agency's most recent air transport rule and created new limits on how EPA can impose an interstate air policy on states.

11 - Senate Republicans Block Committee Vote on Obama EPA Nominee

Bloomberg, 05/09/2013

<http://www.bloomberg.com/news/2013-05-09/senate-republicans-block-committee-vote-on-obama-epa-nominee-1-.html>

Republicans on the Senate Environment and Public Works Committee blocked a vote on confirming Gina McCarthy to head the Environmental Protection Agency by boycotting a meeting called to consider the nomination.

A Message to Mayflower, Arkansas from ExxonMobil Pipeline Co.

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Arkansas attorney general announces special task force

McDaniel: 'Mayflower is a long way from being made whole again'

Posted: May 7, 2013 - 4:46pm

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ANGELA SPENCER STAFF PHOTO Arkansas Attorney General Dustin McDaniel gives an update about the Mayflower oil spill Tuesday.

By [ANGELA SPENCER](#)

LOG CABIN STAFF WRITER

LITTLE ROCK — Arkansas Attorney General Dustin McDaniel announced a special task force within his office to address questions and concerns resulting from the Mayflower oil spill which occurred March 29.

“The Mayflower Consumer Response Team is now up and running in addition to our litigation and environmental efforts,” he said.

McDaniel said residents have been visited by door-to-door salesmen offering air cleaning products and other items, and the attorney general’s office is working to make sure these salesmen are not scammers feeding off the misfortunes of Mayflower residents.

His office will also seek to function as an “information clearing house” to dispel rumors and update the affected residents, including daily updates from the attorney general’s office and other agencies.

McDaniel said he has been concerned about property owners in Mayflower, even beyond the neighborhood where the oil leaked. He said he received a copy of ExxonMobil’s 38-page Property Purchase and Price Protection program Monday.

“I believe that Exxon should purchase all of the affected properties in that area, including those in the subdivision and in the cove area for the appraisal price prior to the spill,” he said. “I do not believe this plan accomplishes that goal and I will have more to say about it soon.”

Although it is a complex plan, McDaniel mentioned three

A Message to Mayflower, Arkansas from ExxonMobil Pipeline Co.

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categories property owners may fall into: Owners whose property may be purchased outright, some who have been told they can put their house up for sale and sometime in the future there may be compensation for a reduced sale price and a third group who has not been spoken to at all.

“The homeowners in the cove area who had water — oily water — lapping up on their property and affected wildlife on their property are not included in this plan at all, as far as I can see,” McDaniel said.

Health is another issue McDaniel said he was concerned about and his office has enlisted the help of its health

care bureau.

“Many continue to suffer from headaches and nausea, and air sampling continues to show that the carcinogen benzene remains in the air,” he said.

Air quality testing has been released with qualifying language stating the benzene is not present in an “imminent health risk,” McDaniel said, but that does not mean it is not present at all.

McDaniel said he is still waiting to find out the cause of the break.

The Unified Command team on the ground in Mayflower has been helpful and responsive to requests, McDaniel said.

The attorney general’s office is preparing for litigation, but McDaniel said it is premature to speculate if or when it may be coming.

The special task force can be reached at 1-800-482-8982 or oilspill@ArkansasAG.gov.

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EPA officials learn about Louisiana agriculture

Bruce Schultz, LSU AgCenter

Wed, 2013-05-08 14:04

Officials from the U.S. Environmental Protection Agency met for a two-day (April 30-May 1) whirlwind tour of Louisiana agriculture with the Louisiana Department of Agriculture and Forestry and the LSU AgCenter to give the EPA an understanding of the state's unique challenges.

The visitors were Sarah Bittleman, the new EPA agricultural counselor; Ron Curry, EPA regional administrator for Region 6 that includes Louisiana; and David Gray, EPA external affairs director in Region 6.

The schedule included a tour of the AgCenter Biofuels Research Center at St. Gabriel and meetings with LDAF Commissioner Mike Strain, the Louisiana Agricultural and Forestry Nutrient Management Task Force, a farm chemical supplier, and farmers and researchers at the AgCenter Rice Research Station.

The officials also took a boat ride through the marsh to see coastal erosion problems, rode in a crawfish boat during a harvest, and met with shrimpers and representatives of the Louisiana Department of Environmental Quality and the Coastal Protection and Restoration Authority. In addition, they visited rice, cattle and sugarcane farms.

A graduate of Tulane Law School, Bittleman already had some familiarity with Louisiana. She was senior advisor to U.S. Department of Agriculture Secretary Tom Vilsack, specializing in energy and environmental issues.

Bittleman said she visited Louisiana as a part of her effort to familiarize herself with agriculture across the country. "Because I'm new at EPA, I'm implementing a strategy to renew relationships with agriculture. I want to get to as many agricultural regions in as many states as possible."

Bittleman wants to develop relationships before issues arise. "This is why you introduce yourself to your neighbors when you move in, not when the tornado is coming."

Bittleman attended a hypoxia task force meeting in Kentucky recently, and after seeing Louisiana marsh loss issues, she has a better understanding of the complete picture. "It's just been a very lucky situation to see how the Mississippi River valley is connected and just how important nutrient management is."

Bittleman, who grew up on a tree farm in New York, was touched by sugarcane farmer Ronald Hebert's concerns that he may not be able to pass on his operation to a son. "That just breaks my heart," she said.

Curry came away with an appreciation of Louisiana's diverse agricultural industry. "I'm impressed with the effort made by Commissioner Strain to help the EPA have a better understanding of the agricultural community in Louisiana."

Curry also got a better understanding of issues such as herbicide drift that he will relay to his staff. "I want our folks to understand the technologies that are being used on the farms."

"I feel that they got a real good taste of Louisiana agriculture," said Carrie Castille, LDAF associate commissioner. "Our goal for this visit is for EPA to see our producers as valuable resources on environmental issues affecting agriculture and forestry."

Strain said the visit helped show the EPA that Louisiana's environmental conditions are unique, especially in the area of water quality, where standards used in other parts of the country are difficult to achieve in Louisiana's slow-moving, meandering bayous.

"Our producers are working hard at conservation," Strain said. "It was important for the EPA to see the differences in how our crops are grown. If there are problems that arise, we can address them."

At the meeting at the Rice Research Station, Bittleman said rice is grown in an area where climate change and salinity problems are confronted. "Where you guys live is pretty much Ground Zero."

Rice farmers Kevin Berken and Jackie Loewer said they were encouraged by the visit. "It's a breath of fresh air to see you," Berken said.

Steve Linscombe, director of the Rice Research Station, told Bittleman about problems rice farmers are having, including bird predation of rice seed and the efforts rice farmers are making toward sustainability.

Linscombe – who has worked with the EPA on issues such as pesticide registrations -- was encouraged by the meeting. "Many decision makers have no idea how crops are grown. A lot of times we're talking with people who don't know rice is grown in a flood."

Source URL: <http://deltafarmpress.com/government/epa-officials-learn-about-louisiana-agriculture>

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Groups Protest Bill Ending Environmental Compliance History

Wednesday, May 8, 2013 | Updated 5:15 AM CDT



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Environmental groups are upset that that Texas House is proposing an end to keeping histories of a company's compliance with state and

federal laws.

Lawmakers are scheduled to vote on Baytown Rep. Wayne Smith's bill on Wednesday. The measure would change how the Texas Commission on Environmental Quality keeps track of how well company's comply with environmental regulations.

The Texas League of Conservation Voters say under current law, it is easy for residents to examine the history of potentially dangerous companies, such as the fertilizer plant in West, Texas that exploded last month. The group says the new proposal would limit the public's access to a company's record.

Smith would limit the records kept by TCEQ to only five years, which he says would be a better program.

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Tulsa gets \$1.4 million in EPA Brownfields grants

Posted: May 09, 2013 4:12 AM CDT

Updated: May 09, 2013 4:12 AM CDT

TULSA, Okla. (AP) - The city of Tulsa has received a total of \$1.4 million in Environmental Protection Agency grants to help clean up contaminated former industrial sites.

The EPA grants include \$600,000 to clean up property once occupied by a paper recycling facility and steel company. Money will also be used to clean up a former metal manufacturing facility and producer of heat exchangers. Officials say the sites are contaminated with arsenic, metals and other contaminants.

The city also received \$800,000 for a revolving loan fund in partnership with the Indian Nations Council of Governments and the Tulsa Industrial Authority. The grant money will be used to in conjunction with the revolving loan fund the city will tap for loans and subgrants to developers for cleanup activities for sites contaminated with hazardous substances.

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Texas appealing to other states for radioactive trash, looks to expand program

By Barnini Chakraborty

Published May 07, 2013 | FoxNews.com

When it comes to nuclear waste, many states have a not-in-my-backyard attitude.

But Texas is rolling out the welcome mat.

A measure that would allow three-dozen states to dump even hotter radioactive waste at a West Texas nuclear facility is picking up steam as it makes its way through the state legislature -- despite growing opposition from environmental groups who argue the economic incentives shouldn't trump public safety concerns.

Introduced by Republican Sen. Kel Seliger, the "low-level radioactive waste bill" encourages other states to send waste with higher concentrations of radioactivity to the 1,300-acre waste burial ground in Andrews County. The bill would keep the maximum volume allowed at the site the same but change the type of material allowed, Seliger told FoxNews.com Tuesday.

"The majority of the items are safe," Seliger said. "The county and the state of Texas has a lot to gain."

The bill highlights how, in Texas, nuclear waste storage has become big business.

During the last legislative session, Texas lawmakers approved the plan to allow waste from more than three dozen states to be buried on the land owned by Dallas-based Waste Control Specialists. Currently, toxic oil-tainted sludge dredged from the Hudson River in New York as well as Cold War-era radioactive waste from an Ohio uranium-processing plant is already buried at the site located near the Texas-New Mexico border.

If Texas lawmakers agree to up the concentration of contaminants, the county and state could receive a considerable boost in money they'd get from Waste Control Specialists. In theory, states and businesses would pay more to send the higher levels of radioactive material to Texas. The company would make more money and in turn the amount it paid the county (5 percent) and the state (25 percent) from its quarterly revenues would also rise.

But according to the Texas Campaign for the Environment, the money made should not be a trade-off for public safety. The group claims politics are to blame.

"To be clear, this proposal is being pushed to directly financially benefit one of the largest campaign contributors involved in Texas politics: billionaire Harold Simmons of Waste Control Specialists who has donated millions of dollars to Gov. Rick Perry and other politicians who are supporting this legislation," program director Zac Trahan told FoxNews.com. "His company stands to earn millions of dollars by turning part of our state into a radioactive waste site which will be poisoned for generations to come."

Calls made to Waste Control Specialists for comment were not immediately returned.

Asked about the claim, Seliger said: "I don't know anything about that."

Seliger's bill also promotes sending low-level waste, known as Class A, out of Texas for burial while upping the annual curie limit -- which refers to the radiation level -- for the state to 300,000 from 220,000. The higher level would allow locations that have Class B or Class C levels of waste to ship it to the Lone Star State for disposal.

The Senate version of the new bill removed a provision that limited Texans from challenging permits to the plant granted by the Texas Commission on Environmental Quality.

A similar bill is making its way through the Texas House. That version, filed by Rep. Drew Darby, goes a step further and not only limits citizen challenges in Texas but also bars people from other states from challenging Waste Control's licenses.

The closest populated town to the site is Eunice, N.M.

Darby's chief of staff, Jason Modglin, told the Texas Observer the legislation was written to streamline "a burdensome process."

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Proposed EPA standards aimed at improving the environment could fuel higher gasoline prices

The Environmental Protection Agency has proposed a new “Tier 3” gasoline standard that would reduce the sulfur content allowed in gasoline and require vehicle manufacturers to improve engines to reduce emissions.

By **Adam Wilmoth** | Published: May 8, 2013  2

The U.S. Environmental Protection Agency's proposed rules for cleaner-burning gasoline and more efficient car and truck engines are drawing predictable responses.

The Tier 3 Vehicle Emission and Fuel Standards Program would reduce the sulfur content allowed in gasoline and require vehicle manufacturers to improve engines to reduce emissions.

The EPA has described the rules as an extension of the Tier 2 standards rolled out beginning in 2000. Those rules, among other things, reduced gasoline sulfur levels to 30 parts per million, down from 300. The proposed new rules would drop that level to 10 parts per million.

Predictably, the proposal has drawn praise from environmental organizations and criticism from the oil and refining industries.

“These Tier 3 standards are absolutely necessary. They are absolutely the right thing to do,” said Jesse Prentice-Dunn, a policy analyst with the Sierra Club in Washington. “Right now, we have more than one in three Americans living where the air is sometimes unsafe to breathe. We've got record childhood asthma. Air pollution is causing a whole host of health issues. These standards will substantially reduce smog-forming pollution and dramatically reduce asthma attacks, premature deaths from air pollution, and it will make a big, big difference.”

The EPA said the rules would add about 1 cent per gallon to the cost of gasoline and add about \$130 to the cost of new cars and trucks while annually preventing 820 to 2,400 premature deaths, 3,200 hospital admissions and asthma-related emergency room visits and 1.8 million days of lost time at school, work and minor activities.

The oil and gas industry said the EPA is exaggerating potential benefits and underestimating costs.

Patrick Kelley, the American Petroleum Institute's senior downstream policy adviser, called the proposal “hard to justify and potentially very harmful.”

Proposed EPA standards aimed at improving the environment could fuel higher gasoline prices

The Environmental Protection Agency has proposed a new “Tier 3” gasoline standard that would reduce the sulfur content allowed in gasoline and require vehicle manufacturers to improve engines to reduce emissions.

By **Adam Wilmoth** | Published: May 8, 2013  2

“The massive refinery investments it would require could drive up the cost of making gasoline and weaken the nation's energy security without producing much, if any, environmental benefit,” he said during a conference call with reporters Tuesday.

Kelley said the new rules would cost the industry \$10 billion, which would translate into a cost to consumers of 6 cents to 9 cents a gallon.

Janet Grothe, senior adviser for health safety and environment at Phillips 66 in Houston, said Phillips representatives have met with the EPA and others several times in recent years to discuss the proposed rules.

“We have been evaluating what changes would be necessary in our refineries to meet the more stringent sulfur standard,” she said. “The proposed standard of 10 ppm annual average would require capital investment in the majority of our U.S. refineries.”

But Prentice-Dunn dismissed the claims of significantly higher costs.

“It's the same tired old argument they've used time and time again,” he said. “What we've seen is numerous, credible studies showing that this would cost less than a penny per gallon and that this is a small price to pay for preventing childhood asthma and making sure we have clean air to breathe. I think more than anything this is the oil industry crying wolf yet again.”

Besides the proposed rules themselves, the oil and gas lobbyists said they are most concerned with the timing and the rule-making procedures. The API on Tuesday formally asked the EPA to allow a full 90 days for public comment before taking up the proposed rules.



Daily News

Advisors See Limits In Pending EPA Fracking Study, Echoing Industry

Posted: May 8, 2013

EPA advisors are raising concerns that data and other limitations could prevent the agency from using its pending study on the possible effects of hydraulic fracturing on drinking water from drawing conclusions on the practice's safety, echoing statements from industry groups who say the study may not be adequate to justify future regulatory policies.

Members of an *ad hoc* panel of EPA's Science Advisory Board (SAB) charged with reviewing the study's progress to date met during a May 7-8 meeting in Arlington, VA, where they pointed to resource and other difficulties the agency faces in gathering adequate data that accounts for concentration of fracking chemicals, a lack of baseline data and in ensuring that up-to-date industry practices are analyzed.

"If we don't know what and how much is there, it takes away the ability to answer questions about impacts to drinking water," Dr. Elaine Faustman, director of University of Washington's Institute for Risk Analysis and Risk Communication said during the May 7 meeting of the SAB panel.

EPA's Office of Research and Development and Office of Water jointly launched the study in 2011, spurred by a request in the agency's 2010 appropriations bill that EPA study the potential implications of fracking for drinking water.

The study design consists of a series of research projects case studies aimed at examining actual fracking operations for potential impacts, literature reviews, toxicity assessments and scenario evaluations for the stages of the water lifecycle of fracking, including water acquisition, produced water composition, chemical mixing and water treatment.

Fracking critics hope the study, slated for completion in a 2014 "synthesis report" summarizing the outcome of the research, will conclude that the controversial process endangers drinking water, lending support to legislative and administrative rulemaking efforts to strictly regulate the process.

During a May 8 hearing before a House Appropriations Committee panel, EPA Acting Administrator Bob Perciasepe said EPA is developing guidance on permitting fracking operations in parallel with the pending study, but he declined to commit to a deadline for completing the effort. "I don't want to predict exactly when we'll be done, but we know it has to get done," he told Rep. Betty McCollum (D-MN).

But industry and congressional Republicans have raised concerns about EPA's methodology for conducting the research, such as how the agency plans to ensure that technological advancements in the field of fracking are accurately reflected in the study.

And in recent comments to the SAB panel, a coalition of industry groups say the agency needs to account for limitations in its research that the groups say could be used to set future regulatory policies. "EPA has not appropriately acknowledged the limitations of its research to achieve the agency's stated goal of informing the public and providing decision makers at all levels with high-quality scientific knowledge that can be used in decision-making processes," American Exploration & Production Council, America's Natural Gas Alliance, American Petroleum Institute and Independent Petroleum Association of America say in an April 30 letter.

Chemical Concentrations

During the SAB meeting, industry emphasized the concern in relation to the accuracy of EPA data on chemical concentrations. For example, in [May 2 comments](#), energy giant Halliburton Energy Systems says EPA must "take into account the different [hydraulic fracturing] HF chemical concentrations found at the various stages of the HF process because as the Panel members well know

the potential impacts to human health associated with an HF chemical in the event it entered a drinking water source would depend on its concentration.”

Speaking during the discussion on EPA’s research into how mixing of fracking chemicals affects drinking water resources, Faustman pointed out that the names and chemical identification numbers of roughly 40 percent of substances submitted to EPA by service companies were withheld as confidential business information (CBI). Those chemicals will not be included in the agency’s portion of the study examining the potential release of fracking chemicals to surface and groundwater.

“There are a lot of unknowns that we don’t really know,” Faustman said, adding that it is important to gain an understanding of what formulations have been used for fracking even as more companies shift to more environmentally benign substances because there are communities situated near drilling sites that may have been impacted by older fracking operations.

In its study, EPA has compiled extensive lists of chemicals commonly used in fracking operations, based upon submissions from nine service companies, data mined from the public database FracFocus and other publicly available information.

But much of the information the agency was able to gather indicates a product volume that was added to a volume of fluids rather than “an accurate representation of the concentration of a particular product or the chemical constituents or the chemical constituents of a product in a fluid formulation,” EPA says in its December 2012 interim study report.

EPA is cross-referencing its list of known chemicals used in fracking against a slew of human health reference values, including those from the agency’s own Integrated Risk Information System (IRIS) assessments, Agency of Toxic Substances & Disease Registry risk levels, and values crafted by California, Florida, Alabama and other states.

The chemical mixing portion of the study is “mostly descriptive” although over phases of the massive study will be breaking new ground, such as the wastewater components, Jeanne Briskin of EPA’s ORD said in response to a question from panel member Dr. Eric Smith, head of Virginia Polytechnic Institute’s Department of Statistics asking for clarification on the purpose of listing the chemicals.

One member of the SAB panel noted that “we need to know the dose to understand the impact,” saying that such information is “critical” to decisionmakers being able to use the final study report to guide policy on fracking.

Dr. Steven Bohlen of the Department of Energy and a member of the panel noted that panelists “need to be able to understand the concentrations because there will be temporal and spatial changes” as companies shift to various newer formulas for fracking fluids and compositions are often based upon the specific geologic formation.

And Dr. Abby Li, a senior scientist with Exponent Health Sciences and another panelist, said that it would be “helpful” if EPA were to select and prioritize chemicals that may be more unique to fracking than other activities to aid in pinpointing causes of contamination, though EPA staff said the agency is not likely to prioritize or rank the chemicals.

The *ad hoc* panel met May 7-8 to discuss EPA’s Dec. 21 “progress report” document outlining the agency’s study efforts to date.

Baseline Data

Some members of the panel also raised concerns about a lack of baseline data in the study, saying that it could complicate the conclusions about fracking’s safety that can be drawn from the final report.

Part of the difficulty stems from EPA’s inability to conduct “prospective” case studies, which are expected to provide a baseline for tracking fracking’s impacts on drinking water as natural gas development begins and progresses at a site, in time for the study’s 2014 completion.

The two prospective case studies, which EPA has struggled to orchestrate with individual energy companies but has been hindered by difficulties in identifying appropriate sites, liability concerns and timing elements, “will not be included in the December 2014 report because we haven’t started them yet,” Ramona Trovato, of ORD told the panel.

But without the data, EPA will not be able to show potential adverse effects from fracking, the panelists said.

“Conclusively determining a relationship will be difficult . . . given the lack of data to characterize background concentrations,” Dr. Elizabeth Boyer, of Pennsylvania State University’s Department of Ecosystem Science and Management, said during the May 7 discussion on how water acquisition could impact drinking water sources.

The panelists similarly raised concerns that EPA had not yet developed models to assess the impacts of high-volume water

withdrawals associated with fracking -- even though EPA has asked for advice on what criteria should be used for determining the water quality impacts of the withdrawals.

Panelists said that a lack of background data further complicates the issue. "It's a big challenge," Dr. Stephen Randtke, of University of Kansas' engineering department, acknowledged, adding that "a lot of indicators of water quality change dramatically" over time.

And Dr. James Saiers, of Yale University's School of Forestry and Environmental Studies, suggested that "if you want to look at water quality, you'll have to collect the data yourself," saying there was a lack of published literature to accurately account for impacts.

Boyer and other members of the panel noted that the study's design may make it difficult to distinguish between impacts from other uses of water and those directly related to fracking. "You have to expect there might be concerns, even in the face of long term data," that it may be difficult to extract conclusions from the study without background water quality and source apportionment data from other sectors, Boyer said.

And panel member Dr. Peter Bloomfield, of North Carolina State University's statistics department, added that water quality varies greatly day-to-day depending on the depth of the aquifer and the location, saying "for that reason, day to day observations are critical -- long baseline records are really important to see if anything has changed."

Panel members also raised questions about how the agency can ensure that up-to-date practices in fracking are being considered, given that some of its data goes back as far as 2005. "There's not really a time bar that shows progression of fracking fluid over the past 10 years" to more benign substances, Dr. Stephen Almond, chemicals director of MeadWestvaco Corporation, said during the discussion.

Panel members are expected to draft individual comments which will be posted to the SAB website over the next several weeks. -- *Bridget DiCosmo* (bdicosmo@iwpnews.com)

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THE BEST WAY TO TRACK CONGRESS

2. AGRICULTURE:

Senate agrees to exempt farms from oil spill regs as part of WRDA bill

Amanda Peterka, E&E reporter
Published: Thursday, May 9, 2013

The Senate yesterday agreed to add an amendment to the Water Resources Development Act that would exempt small farms that store oil in aboveground tanks from federal oil spill regulations.

The amendment by Sens. James Inhofe (R-Okla.) and Mark Pryor (D-Ark.) is similar to a bill the two lawmakers introduced earlier this year and to a measure included in the March continuing resolution. It would set storage tank thresholds below which agricultural operations would be excluded from U.S. EPA's Spill Prevention, Control and Countermeasure Rule.

Over the last two years, farm-state senators and livestock groups have pressed EPA over the rule, asking the agency to extend the deadlines under which producers have to obtain oil spill prevention plans designed by licensed engineers. In November 2011, EPA extended its compliance deadline to this month.

Unlike the continuing resolution, which exempted all farms regardless of size from having to obtain oil spill prevention plans through the rest of this fiscal year, the Inhofe-Pryor amendment would set a series of thresholds. Some farms would be exempt altogether, while others storing a certain amount of fuel would be allowed to self-certify their own oil spill prevention plans.

"It will provide realistic threshold sizes for tank regulation at the farm level," Pryor said during a floor speech Tuesday, "and allow more farms to self-certify, thus saving time and money that would otherwise be spent in hiring professional engineers to develop and sign SPCC plans."

The amendment, which was agreed to unanimously as part of a package of a few amendments, was supported by the nation's largest agriculture organizations, including the American Farm Bureau Federation, the National Cattlemen's Beef Association, the National Council of Farmer Cooperatives, the National Wheat Growers Association, the National Cotton Council, the American Soybean Association, the National Corn Growers and USA Rice.

"Almost everyone having to do with agriculture is very supportive," Inhofe said in a floor speech Tuesday.

As written, the amendment would exempt farms with an aggregate storage capacity of less than 10,000 gallons from complying with the spill prevention rule. Producers that store less than 42,000 gallons in above-ground tanks would be allowed to self-certify their plans ([Greenwire](#), March 8).

Sens. Deb Fischer (R-Neb.), Mary Landrieu (D-La.), Mike Johanns (R-Neb.) and Angus King (I-Maine), co-sponsored the amendment.

Inhofe had negotiated with Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.) over the amendment all day yesterday, according to a livestock source. In his floor speech, the senator said that when the measure was included in the stopgap funding bill, congressional negotiators worked until at least 4 a.m. to come to an agreement.

"I think some people might have an objection to this amendment if they thought there were some bad actors out there who, in the past, have violated or done something, in which case they would still have to comply as if they had over 42,000 [gallons] in storage," he said. "This was called to my attention, and I think in the drafting of this amendment, the senator [Pryor] took care of that problem, I do believe."



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Environmental Justice

EPA Moves to Incorporate Environmental Justice in Agency Permitting Process



By Jessica Coomes

The Environmental Protection Agency is announcing practices that regulated entities can undertake to engage environmental justice communities when applying for environmental permits, according to a notice to be published May 9.

Simultaneously, EPA identified ways the agency's regional offices are encouraging communities to participate in the permitting process.

EPA set a goal to incorporate environmental justice considerations into all of its work, including permitting activities, under a plan developed in 2011 called Plan EJ 2014 (179 DEN A-2, 9/15/11). The two guidance documents described in the May 9 notice respond to that goal.

The agency said environmental justice communities—particularly minority, low-income, and indigenous communities—face barriers to participation in the permitting process, including a lack of trust, lack of awareness, language barriers, and limited technical and legal resources.

Practices for Permit Applicants

For permit applicants, EPA said the first step in a meaningful engagement with a community is to identify and cultivate trusting relationships with community leaders.

Those community leaders can help regulated entities determine the most appropriate ways to provide information to and seek input from community members. The leaders can identify language barriers and identify appropriate media outlets, EPA said.

The agency also said permit applicants can establish a hotline for community members to voice concerns and can designate one person to be a community liaison.

EPA said it is not requiring permit applicants to adopt the practices, however. The practices are “good ideas in the form of suggestions,” the agency said.

“EPA hopes that when permit applicants practice early and meaningful dialogue with community members, they can help build trust, promote a better understanding in neighboring communities of that facility's environmental impact, and build strong relationships that will lead to better results for both the permit applicant and community,” the agency said in the May 9 notice.

Regional Offices Promote Engagement

In addition, EPA identified ways regional offices are encouraging community participation in permitting.

For example, the agency said it will consider prioritizing engagement for EPA-issued permits that are for activities that can significantly affect overburdened communities, such as Clean Air Act construction permits for new major sources and significant underground injection control program permits under the Safe Drinking Water Act.

“Robust public outreach and engagement can consume substantial resources among everyone involved,” the agency wrote. “EPA recognizes that its regional offices cannot enhance engagement for every EPA-issued permit and that overburdened communities might not have the same interest in engagement for every permit potentially impacting them.”

In a June 26 notice, EPA sought public comment on how the agency and permit applicants can engage overburdened communities in the permitting process (77 Fed. Reg. 38,051; 123 DEN A-6, 6/27/12).

In comments on the draft guidance, industry groups urged EPA to clarify that inclusion of environmental justice considerations in the permitting process is voluntary (167 DEN A-2, 8/29/12).

For More Information

The May 9 notice regarding environmental justice and permitting is available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2013-10945.pdf>.

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Daily News

EPA Floats Options To Meet D.C. Circuit's Test For Next Interstate Air Plan

Posted: May 8, 2013

EPA is floating at least three options for how it could approach a future interstate air pollution plan and ensure it complies with a restrictive U.S. Court of Appeals for the District of Columbia Circuit ruling that scrapped the agency's most recent air transport rule and created new limits on how EPA can impose an interstate air policy on states.

The options -- [outlined in an EPA presentation](#) during a recent meeting with state air regulators -- aim to resolve the issue of how to define and calculate each state's Clean Air Act "obligation" to curb emissions that are hindering air quality in neighboring states. The agency is considering "Path A" and "Path B" options that would allow states to consider costs and other factors in assessing obligations, or a more rigid "Path C" that some eastern states are said to favor under which EPA would present states with all their obligations.

But the agency has also noted that the D.C. Circuit's 2-1 ruling that rejected EPA's Cross-State Air Pollution Rule (CSAPR) interstate cap-and-trade emissions rule leaves many ambiguities in place that could make it impossible to craft an air transport plan that satisfies the decision -- a ruling EPA wants the Supreme Court to overturn.

EPA, environmentalists and states supportive of CSAPR [recently filed briefs with the high court](#) urging it to reverse the appellate decision, with the Department of Justice on EPA's behalf arguing that the ruling creates a "proportional" method for interstate air rules that is "unrealistic" under the air law.

CSAPR would have established a trading program in 28 states to reduce nitrogen oxides (NOx) and sulfur dioxide (SO2) from power plants to cut interstate transport of emissions and help states attain federal emissions standards. The rule was designed to replace the Clean Air Interstate Rule (CAIR), a similar NOx and SO2 trading program that the D.C. Circuit vacated in the 2008 decision *North Carolina v. EPA* after finding flaws in that program.

The D.C. Circuit said EPA erred in how it determined significant contribution for individual states and power plants subject to the rule, notably by using a two-step process that first discerned whether a state's emissions were above a certain threshold and then established pollution reduction requirements considering the states' contribution to downwind pollution issues as well as the cost of those reductions. "EPA's authority to force reductions on upwind states ends at the point where the affected downwind state achieves attainment," the court's majority said.

EPA may only require states to reduce their "fair share" of downwind pollution issues, and "the collective burden must be allocated among the upwind states in proportion to the size of their contributions to the downwind State's nonattainment," or the agency would violate the air law and *North Carolina*, the majority said.

While the Supreme Court weighs whether to take up the case, *EME Homer City Generation, L.P., et al. v. EPA, et al.*, EPA is holding meetings with state and local air officials to discuss interstate air policy options. It held meetings April 8 in Research Triangle Park, NC, and April 17 in Denver, CO. EPA also discussed the issue at the April 30-May 2 National Tribal Forum on Air Quality in Fountain Hills, AZ, and at the May 5-8 spring meeting of the National Association of Clean Air Agencies (NACAA) -- representing state and local air agencies -- in St. Louis, MO.

At the NACAA meeting, Maryland Department of the Environment air chief Tad Aburn [gave a presentation](#) in which he said it appears EPA is likely to craft a future policy through which it assigns emission reduction responsibilities to states, leaving it up to states to identify which control program to adopt to meet those mandates.

EPA is looking to address the D.C. Circuit's opinion in *Homer City* which found that CSAPR "violated the statute because it made no

attempt to calculate upwind States' required reductions on a proportional basis that took into account contributions of other upwind states to the downwind states' nonattainment problems."

States' Obligations

According to EPA's presentation from the April 8 meeting, the agency has identified at least three potential options for a future interstate air policy that could potentially satisfy the appellate court's ruling.

EPA notes that the court's ruling could apply either to emission reductions, for example, tons of ozone-season NO_x, or reductions in contributions, for example, parts per billion (ppb) of ozone.

In addition, the agency could consider applying proportionality either with or without the home state contribution, one of many variables that render replacing CSAPR complex. "Including the contribution from the home state in the calculation reduces the burden on upwind states," EPA says in the presentation.

EPA also outlined three options -- Paths A, B, and C -- for implementing the ruling. Under Path A, EPA would define states' obligations as an amount of ppb proportional share "minus adjustments," under Path B EPA would define states' obligations as an amount of emission reduction target minus adjustments, and under Path C EPA would define states' obligation as an emission budget that incorporates cost and "sub-NAAQS control adjustments."

Sub-NAAQS control adjustment refers to the obligation, established by *Homer City*, for EPA to avoid imposing any requirements that would require reductions in upwind states' contribution to downwind states' air quality problems that would exceed those air pollution cuts necessary for downwind states to meet federal air standards.

Another issue that would require adjustments is a possible threshold used to determine whether the contribution of an upwind states is deemed "significant." The Clean Air Act requires only that upwind states reduce their "significant contribution" to problems attaining or maintaining NAAQS downwind. Under CSAPR, EPA used a threshold of one percent of the NAAQS, expressed in ppb, to determine which contributions were "significant," and hence should be controlled. However, sources say that the one percent significance threshold could conceivably change.

EPA must also make adjustments for costs. The D.C Circuit ruling holds that EPA may adjust upwind states' obligations to ensure they face reasonable costs, but may not adjust downwind states' obligations based on cost.

EPA says that under Path A, states would conduct air quality modeling to convert ppb improvement to emission reductions, then apply cost and sub-NAAQS control adjustments themselves. Under Path B, EPA would convert ppb improvements to emission reductions, leaving states to again apply adjustments for cost and sub-NAAQS control. Under Path C, EPA would perform all of these functions itself, and present states with their final obligations.

While outlining the three potential options, the presentation notes that many other ambiguities remain as a result of the *Homer City* ruling, for example, "How should multiple linkages be treated in determining proportional shares?," and "How should we account for the proximity of upwind states relative to downwind receptors."

EPA says that "addressing sub-NAAQS over-control can become complex" in situations such as where states are both upwind and downwind states, or where "multiple upwind states have obligations to the same receptor [air quality monitor] as well as different obligations to other receptors." Also, the agency notes that *Homer City* does not give clear guidance on which receptors should be considered "maintenance" rather than "nonattainment" in meeting EPA's ambient air standards, and how to handle states that are "linked" to a maintenance receptor.

In a ["High-Level Summary"](#) of EPA's meetings with states and tribes on these issues, recently posted on the agency's website, EPA identifies some early trends among states' views. The agency found a "general tendency towards path C . . . more noticeable from eastern states; western states appeared more split." Some states also suggested that the agency finalize Path C, but offer the more flexible Paths A and B as alternative options.

Vitter's Concerns

While EPA holds meetings to discuss a future air transport plan, Senate Environment & Public Works Committee ranking member David Vitter (R-LA) is querying EPA air chief Gina McCarthy -- nominated to be the next agency administrator -- on why EPA is pursuing high court appeal of the CSAPR ruling.

In questions to McCarthy ahead of her May 9 environment panel confirmation vote, Vitter asked McCarthy to explain why the agency's petition for high court review warns of dire public health harm that will result from a failure to overturn *Homer City* and reinstate

McCarthy in her answers, released by Vitter May 6, says, "A single year of emissions data does not provide a complete picture and is not a substitute for having the CSAPR regulatory requirements in place to guarantee that those emission reductions endure over time. Unfortunately, in recent months, we have seen an increase in harmful emissions from some sources that were covered by CSAPR," which targeted power plants.

When asked whether EPA will propose a replacement rule for CSAPR, and will allow states enough time to implement it, McCarthy says only that the agency is working with states on a "path forward" and "will be mindful of the need to provide appropriate timelines for states and the regulated community."

Vitter also asks McCarthy whether EPA intends to return to its earlier position that states can meet their obligations to impose best available retrofit technology (BART) on electric generating units (EGUs) contributing to visibility-obscuring haze by participating in CAIR, if the Supreme Court declines to hear *Homer City*.

"EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on [CSAPR] to meet those requirements," McCarthy says.

Legal Challenges

Some states are not waiting for the Supreme Court's decision before pressing ahead with litigation to force EPA and other states to draft state implementation plans (SIPs) -- blueprints for how states will attain EPA national ambient air quality standard (NAAQS) -- to curb interstate pollution transport, whether in the form of "infrastructure" SIPs setting out general parameters of states' air programs, or in SIPs aimed specifically at regional haze.

In May 2 filings with the U.S. Court of Appeals for the 6th Circuit, Connecticut, Delaware and Maryland contest EPA's March 6 rule approving the infrastructure SIP, including air transport provisions, of Tennessee for the 2008 ozone NAAQS, and EPA's March 7 rule approving Kentucky's infrastructure SIP for the same NAAQS. In both rules, EPA expressly declines to address transport issues, despite the fact that environmentalists say the SIPs illegally rely on CAIR.

EPA has proposed to disapprove a number of CAIR-reliant SIPs, but in a response to comments in the March 7 rule, the agency says that as a result of the *Homer City* ruling leaving CAIR in effect, it will not finalize these actions. "EPA believes the DC Circuit's decision in *EME Homer City* vacating [CSAPR] is also nationally applicable. As such, EPA does not intend to take any actions, even if they are only reviewable in another federal Circuit Court of Appeals, that are inconsistent with the decision of the DC Circuit," EPA says. -- *Stuart Parker* (sparker@iwpnews.com)

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Bloomberg

Senate Republicans Block Committee Vote on Obama EPA Nominee

By Mark Drajem - May 9, 2013

Republicans on the Senate Environment and Public Works Committee blocked a vote on confirming Gina McCarthy to head the Environmental Protection Agency by boycotting a meeting called to consider the nomination.

Louisiana Senator [David Vitter](#) said today the agency hasn't answered all the party's questions, and none of the eight Republicans would attend the meeting that was scheduled for this morning. Republican committee members said Senate rules require two minority-party members or all majority-party members be present and voting for the committee to act.

Senator [Barbara Boxer](#) of California, the panel's chairman, vowed to work with Democrats to schedule a time for a vote, as Democrats said the Republicans' action is an abuse of the rules.

"I am stunned that this happened," Boxer said at the hearing today. "This is outrageous."

It is the second time Senate Republicans blocked committee action on a nomination by President [Barack Obama](#) in 24 hours. Yesterday, a party member invoked an infrequently used Senate rule to delay for a week a committee meeting to vote on [Thomas Perez](#) to be labor secretary. Republican leader [Mitch McConnell](#) said Perez was in pursuit of a "far-left ideology."

"If the president nominates good people, honest people, they ought to get a vote," Delaware Senator Tom Carper said today at the committee meeting.

Romney Aide

McCarthy, if confirmed, would take over an agency that Republicans have criticized for pollution limits that they say will cost jobs and hurt the economy. McCarthy is assistant administrator for air pollution at the EPA, and before joining the Obama administration served Republican governors, including [Mitt Romney](#) in [Massachusetts](#).

Vitter said he had asked five specific questions of the EPA related to transparency in agency decision-making, and he said the agency had only adequately answered one query.

“We’re not asking the administration to walk away from their views on [carbon emissions](#), or anything else,” Vitter said. Instead, they seek “openness and transparency.”

“They know, [Gina McCarthy](#) knows, EPA knows that our whole focus, every Republican on the committee, has been the five” questions.

Asked what their action had to do with McCarthy’s credentials, Vitter said lawmakers are concerned about openness and transparency at the EPA. He said that as a top EPA official, McCarthy is accountable for the agency’s handling of information and she’s been “extremely irresponsible” in dealing with their requests.

The acting administrator, Bob Perciasepe, is perfectly capable of running the agency until a new EPA administrator is confirmed, he said.

Democrats distributed a series of letters the EPA had sent to Vitter and other Republicans answering their questions, and Boxer said McCarthy had answered more than 1,000 specific inquiries.

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